

Remarks

Claims 1-13 are pending.

Claims 14-17 have been canceled. Applicants retain the right to pursue the subject matter of these claims in other patent applications.

Claims 1-3 and 5-8 have been allowed.

Claims 4 and 9-13 have been rejected.

Rejections Under 35 U.S.C. §112, First Paragraph

Claims 4 and 9-13 stand rejected under 35 U.S.C. §112, first paragraph, for allegedly containing subject matter not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention with respect to the availability of the strain ATCC 35203. The Examiner has indicated that the rejections under 35 U.S.C. §112, first paragraph, will be withdrawn upon receipt of a statement pertaining to the availability of the strain.

Claim 4 does not contain any reference to strain ATCC 35203. Applicants respectfully assert that Claim 4 complies with the enablement requirement and request withdrawal of the present rejection of Claim 4.


Applicants respectfully point out that Claim 5 contains a reference to strain ATCC 35203.

Applicants respectfully traverse the rejection of claims 9-13. In the Office Action at page 2, the Examiner incorrectly states that it does not appear that ATCC 35203 is a readily available material. Applicants respectfully disagree. Enclosed is the ATCC Product Description for ATCC 35203 which indicates that there are no restrictions imposed by the depositor (Sanko Company, Ltd.) on availability to the public. In particular, the ATCC Product Description for ATCC 35203 does not contain the statement that the "material is cited in a U.S. and/or other patent or patent application, and may not be used to infringe on the patent claims", and thus is readily available to the public by purchase from the ATCC. Accordingly, it is submitted that this rejection is improper and should be withdrawn.

In summary, Applicants believe that the claims 9-13 as well as claim 5 comply with the enablement requirement and respectfully request withdrawal of the rejection of claims 9-13.

Respectfully submitted,

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